



## I. INTRODUCTION

1. This is an action by Plaintiff pursuant to the Freedom of Information Act (hereinafter, “FOIA”), 5 USC § 552, et seq, to order the production of agency records maintained by the VA. Plaintiff seeks the documentation set forth below and seeks this Court’s assistance to compel production of documents wrongfully withheld from Plaintiff and to vindicate the statutory right to inspect federal agency documents. Plaintiff asserts that there is a “significant public interest in disclosure” of the records requested by Plaintiff.
2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), the Freedom of Information Act, and 28 U.S.C. § 2201, the Federal Declaratory Judgment Act.
3. The government records which Plaintiff requests are **his** individual claims files (hereinafter, “C-Files”) maintained by the VA in a system of records for Veterans making claims for Veterans Disability Compensation and/or Survivor Benefits claims pursuant to Title 38 of the United States Code. *See Exhibit A (Plaintiff’s FOIA Request).*

## II. JURISDICTION AND VENUE.

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States, in particular, 5 U.S.C. § 552. In addition, this Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(b), under which, “the District Court of the United States, in the district in which the complainant resides ... has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant”, as Plaintiff’s residence is in this district.

## III. PARTIES.

5. Plaintiff is an individual, and a resident of the State of Texas and resides at

**9042 Broadmoor Bend**

**San Antonio, Texas 78251-4337**

6. Défendant DENIS RICHARD MCDONOUGH is the Secretary of the Department of Veterans Affairs, which is believed to maintain facilities throughout this District.

7. Défendant LEIGH BRADLEY is the General Counsel of the Department of Veterans Affairs.

#### **IV. SERVICE.**

8. Défendant DENIS RICHARD MCDONOUGH, Secretary of the Department of Veterans Affairs, may be served by mailing a copy of this compliant and summons by certified mail to the following address: U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420.

9. Défendant LEIGH A. BRADLEY, General Counsel of the Department of Veterans Affairs may be served by mailing a copy of this compliant and summons by certified mail to the following address: U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420.

10. The United States of America may be served by serving the U.S. Attorney for the district in which this action if brought **PRO SE** and by serving a copy of this complaint and a summons by certified mail to the Attorney General of the United States [U.S. Attorney General, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001].

#### **V. FACTUAL ALLEGATIONS.**

11. The FOIA requires U.S. government agencies to promptly make public records

Available to any person if that person makes a request which (1) reasonably describes the records sought and (2) complies with any applicable agency rules for making such a request. 5 U.S.C. § 552(a)(3)(A).

12. The FOIA requires an agency to issue a final determination on any such information request within twenty (20) business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i)

13. The FOIA allows an agency to extend this determination deadline, however, by ten (10) working days when “unusual circumstances” exist and when the agency so notifies a requester in writing. 5 U.S.C. § 552(a)(6)(B).

14. An agency is entitled to only one (1) ten-business day extension. *Id.* The written notice provided to the requester must specify the specific unusual circumstances justifying the extension and the date on which a final determination is expected to be dispatched. *Id.*

15. In limited circumstances, the FOIA allows an agency to invoke an extension beyond ten (10) days. To invoke a longer extension, the FOIA requires an agency to provide written notification to the requester that (1) offers the requester an opportunity to limit the scope of the request so that it may be processed within that time limit, or (2) offers the requester an opportunity to arrange with the agency an alternative time frame for processing the request. 5 U.S.C. § 552(a)(6)(B)(ii).

16. Plaintiff served, and the VA received, a FOIA Request on **12/18/2021** seeking production of Plaintiff's C-File. See Exhibit A.

17. The VA has not fulfilled this request.

18. Plaintiff served a timely FOIA Appeal to the VA OGC on **02/02/2021** pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). See Exhibit B. The United States Postal Service (hereinafter, "USPS") has indicated that the VA OGC signed for this appeal on **02/09/2021**. See, Exhibit D. Neither the VA nor the VA OGC has provided copies of Plaintiff's C-file, despite having actual knowledge of the statutory deadline to respond within 20 working days from receipt of appeal. See e.g., Exhibit A; Exhibit B.

**VI. FIRST CAUSE OF ACTION.**  
(FOIA Request for Plaintiff's C-File)

19. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

20. FOIA mandates the disclosure of the documents that Plaintiff seeks in Plaintiff's FOIA request to the VA.

21. The VA has not provided Plaintiff with the records.

22. The VA has not sought extension to the lawful response time under FOIA.

23. No FOIA exemptions apply to this request.

24. No exceptional or unusual circumstances preclude a response to the request within twenty (20) business days of the request.

25. An actual and justiciable controversy exists as to whether the VA has violated the FOIA.

26. Plaintiff seeks declaratory judgment that FOIA entitles Plaintiff to the records it seeks as part of its FOIA request to the VA.

27. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, the VA will continue to violate the rights of Plaintiff and others similarly situated by maintaining its pattern or practice of unlawfully delaying and/or denying and/or ignoring responses to FOIA requests and appeals.

#### **IX. DEMAND FOR JURY TRIAL**

28. Plaintiff respectfully prays for trial by jury, where not prohibited by law.

#### **X. PRAYER FOR RELIEF**

29. Wherefore, Plaintiff requests this Court:

- a) Order Defendant to provide true copies of all requested documents without further delay or obfuscation;
- b) Expedite this proceeding as provided for in 28 U.S.C. § 1657;

- c) Award Plaintiff court costs, as provided in 5 U.S.C. §552(a)(4)(E), and/or under any other appropriate federal statute; and,
- d) Grant such other and further relief as the Court, in its wisdom, may deem just and proper, including any damages for any violation of the U.S. Constitution that may arise herein.

RESPECTFULLY SUBMITTED,

*Rene A. Ramirez*

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**Rene A. Ramirez**  
**9042 Broadmoor Bend**  
**San Antonio, TX. 78251-4337**  
**C: (210) 620-8722**  
**F: (210) 8555912**



# FREEDOM OF INFORMATION ACT REQUEST

12/16/2020

RE: FREEDOM OF INFORMATION ACT REQUEST  
Veteran: Rene Antonio Ramirez  
VA Claim No: CSS 460-35-3997  
Veteran Social Security #: 460-35-3997

To Whom it May Concern:

This is a request for documents under 38 C.F.R. §1.577, the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, on behalf of **Rene Antonio Ramirez** (Veteran). This request is properly made via facsimile as it contains the signature of the requester.

## 1. IDENTIFICATION OF DOCUMENTS.

I hereby request a copy of all documents contained in any VA claims folder for any of Veteran's VA claims, to include all documents in the right flap, left flap and center flap, and all electronic documents in any VBA file related to Veteran's Title 38 Claim(s), including by not limited to "Virtual VA", VBMS-A, VBMS-R, and VBMS-D, as well as any documentation pertaining to this Veteran and/or his/her VA claims and/or Appeals in AMIE/CAPRI/VGRIS/VACOLS, and/or in any other system of records in the BVA (or under contract with the VBA) used to preserve information (whether substantive, procedural, or meta-data) related to those records, wherever such records about the Veteran's claim are kept or stored by the VA

## 2. FORM/FORMAT IN WHICH TO PRODUCE INFORMATION.

The FOIA and the VA's own internal policies related to FOIA requests, require that the records be produced in the format sought by the requester, if the record is readily reproducible in that form or format.

I PREFER RECEIPT OF THESE RECORDS ON **CD-R IN PDF FORMAT**

Please take special care to ensure that both sides of any two-sided documents produced in response to this request are included in the response, and are scanned into a PDF in such a way that they do not "bleed-through" from one side of the document to the other.

## 3. TIME FOR RESPONSE.

Please note that this request for documents is being made pursuant to the Privacy Act, 5 U.S.C. § 552, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552a, as well as 38 C.F.R. §1.550 and 38 C.F.R. § 1.577. Your agency has a duty to respond to this request within TWENTY (20) BUSINESS DAYS of the date of this request pursuant to 5 U.S.C. § 552 (a)(6)(A)(2)(i).

Additionally, although an extension of time to respond may be requested, it may only be granted for "unusual circumstances." "Predictable agency workload" is not typically considered an unusual circumstance as stated in 5 U.S.C. § 552(a)(6)(C)(ii).

Moreover, even to the extent that unusual circumstances could be demonstrated in this instance, the time limit for the extension is limited to "10 working days" pursuant to 38 C.F.R. § 1.553(d).

Please also be aware that your agency's failure to respond to this request within twenty business (20) days can result in the filing of an administrative appeal with the office of the Secretary of the Department of Veterans Affairs pursuant to 38 C.F.R. § 1.557 and 5 U.S.C. § 552(a)(6)(A)(2)(ii), and/or, the filing of a federal lawsuit to compel the production of the information.

In any such appeal or lawsuit, I intend to seek not only injunctive and/or monetary relief related to this request, but to the extent permitted by law, injunctive and/or monetary relief based on the Department of Veteran's Affairs patterns and/or practices of responding to FOIA requests in a manner violative of the FOIA, as well as attorney fees and litigation expenses, and any other remedy/relief available at law.

4.) Point of Contact

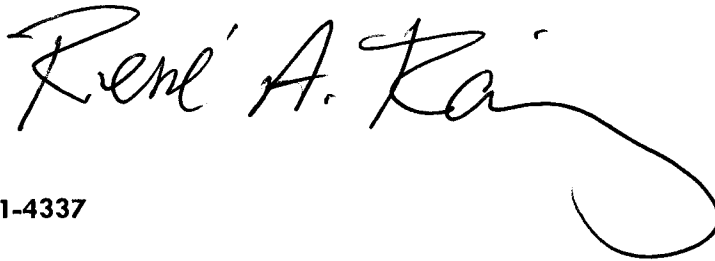
As discussed above, please respond to this request within twenty (20) business days. I may be contacted at **210-620-8722**.

Thank you very much in advance for your assistance.

Respectfully,

/s/ Rene A. Ramirez

Rene A. Ramirez  
9042 Broadmoor BND  
San Antonio, TX. 78251-4337

A handwritten signature in black ink, reading "Rene A. Ramirez". The signature is written in a cursive style with a large, sweeping loop at the end of the last name.

**From:** MetroFax  
**To:** [erimara43@gmail.com](mailto:erimara43@gmail.com)  
**Subject:** Successful transmission to 13146793730. Re: UNKNOWN  
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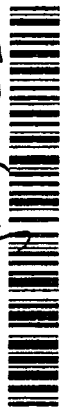
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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Department of Veterans  
Affairs

810 Vermont Avenue NW  
Washington, DC 20420



9590 9402 6350 0296 2425 20

2. Article Number (Transfer from outside label)

7020 3160 0001 1056 1953

PS Form 3811, July 2020 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *K. Bennett* ~~Agent~~ ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

2-9-21

D. Is delivery address different from item 1? ☐ Yes ☐ No

If YES, enter delivery address below:

3. Service Type

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